

I am pleased to have the support of Senators DURBIN, ALLEN, VOINOVICH, WARNER, BROWNBACK, CHAMBLISS, ROCKEFELLER, and COLLINS in this effort. Our bipartisan bill would enhance the Federal Government's efforts to recruit and retain individuals possessing skills critical to preserving our national security. Through a targeted student loan repayment program and fellowships for graduate students, this legislation would help eliminate the Government's shortfall in science, mathematics, and foreign language skills.

I am pleased to note that the Committee on Governmental Affairs favorably reported S. 589 in June. When this bill comes before the Senate for consideration, I urge swift passage so that Federal agencies with direct responsibility for protecting our homeland have personnel with foreign language and other necessary skills to deter and prevent another terrorist attack.

#### IRAQ AND AMERICAN FOREIGN POLICY

Mr. CARPER. Mr. President, I rise to call the Senate's attention to a very important address that my distinguished senior colleague, the ranking member of the Foreign Relations Committee, delivered today on America's foreign policy and our ongoing operations in Iraq. I commend Senator BIDEN for his wise and eloquent words, and I hope that all of my colleagues will take note of this insightful address.

Senator BIDEN delivered this address today on the one-year anniversary of the bipartisan hearings he held last year as chairman of the Foreign Relations Committee, in which the committee explored many of the very questions that are bedeviling us today in post-war Iraq. Those hearings raised, before the war, all of the questions we are confronted with today with respect to how many troops we will need to maintain in Iraq and for how long, as well as how much the reconstruction of Iraq will cost and how we can best secure international cooperation to share the burdens of bringing peace and democracy to Iraq. Indeed, Chairman BIDEN said at the very first of those hearings last year, "We need a better understanding of what it would take to secure Iraq and rebuild it economically and politically. It would be a tragedy if we removed a tyrant in Iraq, only to leave chaos in his wake." One can only wish that the administration had paid more attention to the questions the committee raised and some of the warnings that the committee received from the distinguished witnesses that testified during those hearings.

Senator BIDEN's speech today was an unapologetic defense of the decision to go to war in Iraq. "Anyone who can't acknowledge that the world is better off without [Saddam] is out of touch," he said. "The cost of not acting against Saddam would have been much greater,

and so is the cost of not finishing the job." At the same time, Senator BIDEN's speech today was also a ringing affirmation of the historical tradition of bipartisan foreign policy that has been the hallmark of this institution and of the Senate Foreign Relations Committee, in particular. He suggests that today, and I quote, "the stakes are too high and the opportunities too great to conduct foreign policy at the extremes."

In very convincing terms, Senator BIDEN argues that we need to chart a sensible path between the prescriptions of neo-conservative purists, who affirm a strident unilateralism, and multi-lateral purists, who shrink from forcefully acting in the absence of international consensus. Again I quote: "What we need isn't the death of internationalism or the denial of stark national interest, but a more enlightened nationalism—one that understands the value of institutions but allows us to use military force, without apology or apprehension if we have to, but does not allow us to be so blinded by the overwhelming power of our armed forces that we fail to see the benefit of sharing the risks and the costs with others."

As Senator BIDEN argues, we need to act forcefully, but humbly in the world today. We need to be unapologetic in the post-9/11 world about fighting for the security of our people. But we need to pursue our goals, as Thomas Jefferson once said, "with a decent respect to the opinions of mankind." The course that Senator BIDEN outlined today is the course we should follow, Mr. President. Ultimately, I believe that most Americans will conclude that we were right to act in Iraq. We also need to see the job through. But we need to reengage with the international community and make them partners in the noble work of securing the peace in Iraq and spreading freedom and democracy throughout the region. Again, I commend Senator BIDEN's address to my colleagues' attention, and I ask unanimous consent that the full text of it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE NATIONAL DIALOGUE ON IRAQ + ONE YEAR  
(By Senator Joseph R. Biden, Jr., The Brookings Institute, July 31, 2003)

#### INTRODUCTION: AMERICA'S PLACE IN THE WORLD

Most Americans don't know what you and I know, that there's a war being waged in Washington to determine the direction of our foreign policy. It goes well beyond the ordinary skirmishes that are the stuff of politics and tactics. This war is philosophical. This war is strategic and its outcome will shape the first fifty years of the twenty-first century, just as the consensus behind containment shaped the last fifty years.

Right now, the neo-conservatives in this Administration are winning that war. They seem to have captured the heart and mind of the President, and they're controlling the foreign policy agenda. They put a premium on the use of unilateral power and have a set

of basic prescriptions with which I fundamentally disagree. Just as I disagree with those in my own Party who have not yet faced the reality of the post-9-11 world, and believe we can only exercise power if we act multilaterally.

I don't question the motives of either the neo-conservatives or the pure multilateralists. They genuinely view the world differently than I do. Suffice it to say, in my view the neo-cons and the pure multilateralists are both wrong. What we need isn't the death of internationalism or the denial of stark national interest, but a more enlightened nationalism—one that understands the value of institutions but allows us to use military force, without apology or apprehension if we have to, but does not allow us to be so blinded by the overwhelming power of our armed forces that we fail to see the benefit of sharing the risks and the costs with others.

In my view, the stakes are too high and the opportunities too great to conduct foreign policy at the extremes.

#### ONE YEAR AGO

Exactly one year ago today, when I was Chairman of the Foreign Relations Committee we began a series of bipartisan hearings on America's policy toward Iraq.

Our purpose was to start a national dialogue and give the American people an informed basis upon which to draw their own conclusions. At that first hearing, I said "President Bush has stated his determination to remove Saddam from power a view many in Congress share . . ." and I was among them. I also said as clearly as I could "If [removing Saddam] is the course we pursue . . . it matters profoundly how we do it and what we do after we succeed."

Now, a year later, Saddam is no longer in power and that's a good thing. His sons Ouday and Qusay have been killed. That's another good thing. They deserve their own special place in hell. But the mission is hardly accomplished. The new day in the Middle East has not yet dawned.

We're still at war. American soldiers are still dying, one, two, three at a time. Iraq is still not secure. Still no one has told our troops that they'll have to stay for a long time in large numbers; that they'll have to tough it out. Most Americans still don't realize it's costing us a billion dollars a week to keep our troops in Iraq, and billions more in reconstruction, and revenue from Iraqi oil will not cover these costs.

And we still haven't heard a single clear statement from the President articulating what his policy is in general and, specifically, that securing Iraq will cost billions of dollars, require tens of thousands of American troops for a considerable amount of time, and that it's worth it. And, most importantly, why it's in our national interest to stay the course.

Some in my own Party have said it was a mistake to go into Iraq in the first place, and the benefit is not worth the cost. I believe they're wrong. The cost of not acting against Saddam would have been much greater, and so is the cost of not finishing the job. The President is popular. The stakes are high. The need for leadership is great.

I wish he'd used some of his stored-up popularity to make what I admit is an unpopular case. I wish the President, instead of standing on an aircraft carrier in front of a banner that said: "Mission Accomplished" would have stood in front of a banner that said: "We've Only Just Begun."

I wish he would stand in front of the American people and say: "My fellow Americans, we have a long and hard road ahead of us in Iraq, but we have to stay in Iraq. We have to finish the job. If we don't, the following will

happen. Here's what I'll be asking of you and, by the way, I'm asking the rest of the world to help us as well. And I am confident we'll succeed and as a consequence be more secure."

I'm waiting for that speech.

I said a year ago that, "In Afghanistan, the war was prosecuted exceptionally well, but the follow-through commitment to Afghanistan's security and reconstruction has fallen short."

Our failure to extend security beyond Kabul has handed most of the country to the warlords. The Taliban is regrouping. The border area with Pakistan is a Wild East of lawlessness. Afghanistan is now the number one opium producer in the world. The proceeds will fund tyrants and terrorists, who will fill the security vacuum, just as they did a decade ago. And the billion dollars the Administration is talking about sending Karzai is a year late and about 2 billion short. The failure to win the peace in Afghanistan risks being repeated in Iraq with even graver consequences.

Those failures could condemn both countries to a future as failed states, and we know from bitter experience that failed states are breeding grounds for terrorists.

If we don't write a different future, Americans will be less secure.

I said at that first hearing and I still believe today that "We need a better understanding of what it would take to secure Iraq and rebuild it economically and politically. It would be a tragedy if we removed a tyrant in Iraq, only to leave chaos in his wake."

But that's exactly what could happen unless we make some significant changes.

Dr. Hamri, in his report to the Secretary of Defense and in testimony before the Committee, said that the window of opportunity is closing and it's closing quickly.

#### THE ROAD TO BAGHDAD

Nine months ago, I voted to give the President the authority to use force. I would vote that way again today. Why? Because for more than a decade Saddam defied more than a dozen U.N. Security Council Resolutions. He lost the Gulf War, sued for peace, and was told by the U.N. what he had to do to stay in power. Then he violated those agreements and thumbed his nose at the U.N. He played cat-and-mouse with weapons inspectors and failed to account for the huge gaps in his weapons declarations that were documented by the U.N. weapons inspectors in 1998. He refused to abide by the conditions and, when he refused, it became the fundamental right of the international community to enforce those rules.

I voted to give the President authority to use force because Saddam was in violation of his agreements. He was a sadistic dictator who used chemical weapons against the Kurds and the Iranians. He killed thousands of Shiites. He invaded his neighbors, crossed a line in the sand, fired missiles into Israel. And if we'd left him alone for five years with billions of dollars in oil revenues I'm convinced he'd have had a nuclear weapon that would have radically changed the strategic equation to our detriment.

In my view, anyone who can't acknowledge that the world is better off without him is out of touch. That was the case against Saddam. The President made it well.

But then the ideologues took over and made Iraq about something else. They made it about establishing a new doctrine of preemption. And, in so doing, we lost the good will of the world. Let me be clear. We face a nexus of new threats and it requires new responses. Deterrence got us through the Cold War but it can't be the only answer now.

The right to act preemptively in the face of an imminent threat must remain part of

our foreign policy tool kit, as it always has been.

But this Administration has turned preemption from a necessary option into an ill-defined doctrine. Iraq was to be the test case. In my view, Iraq wasn't about preemption—It was about the enforcement of a surrender agreement drafted by the international community and signed by Saddam.

Making Iraq the case for preemption, putting it at the heart of our foreign policy, made it harder to get the world to join us. Why? Because not one of our allies wanted to validate the preemption doctrine. Raising preemption to a doctrine sends a message to our enemies that their only insurance against regime change is to acquire weapons of mass destruction as quickly as they can.

It sends a message from India and Pakistan, to China and Taiwan, to Israel and its Arab neighbors—if the United States can shoot first and ask questions later, so can they.

Preemption demands a high standard of proof that can stand up to world scrutiny and "murky intelligence" is hardly enough to meet that standard.

Instead of a preemption doctrine, we need a prevention doctrine that defuses problems long before they are on the verge of exploding. And I'll be talking more about that in the coming weeks.

For now, suffice it to say, the Administration was wrong to make Iraq about preemption. But we were right to confront the challenge posed by Saddam.

Contrary to what some in my Party might think, Iraq was a problem that had to be dealt with sooner rather than later. I commend the President—He was right to enforce the solemn commitments made by Saddam. If they're not enforced, what good are they?

For me, the issue was never whether we had to deal with Saddam, but when and how. And it's precisely the when and how that this administration got wrong. We went to war too soon. We went with too few troops. We went without the world. And we're paying a price for it now.

We authorized the President to use force. Congress gave him a strong hand to play at the United Nations. The idea was simple.

We would convince the world to speak with one voice to Saddam: disarm or be disarmed. In so doing we hope to make war less likely. If Saddam failed to listen and forced us to act, we'd have the world with us.

But the Administration mis-played that hand . . . undercutting the Secretary of State allowing our military strategy to trump our diplomatic strategy. The world was convinced that we were determined to go to war no matter what Saddam did, and there were those in Europe who said they'd never go to war no matter what Saddam did or didn't do.

We insulted our allies and the U.N. weapons inspectors. We failed to be flexible in securing a second U.N. resolution. For the price of a 30-day deadline, we could have brought a majority of the Security Council along with us. We didn't.

We flip-flopped between trying to bully and bribe the Turks. We lost the option to attack from the North and as a result, we by-passed the Sunni triangle, which is the source of so much of our trouble today. And worst of all, we hyped the intelligence. I said "hyped", not "lied about it." I don't believe the President lied. But I do believe he was incredibly ill-served by those in his administration who exaggerated the very pieces of intelligence most likely to raise alarms with the American people.

It's not just 16 words in the State of the Union. It's that consistently, in speech after speech, TV appearance after TV appearance, the most senior Administration officials left

the impression with the American people that Iraq was on the verge of reconstituting nuclear weapons. In fact, the Vice President Cheney said they had already done it that it was in league with Al Qaeda and complicit in the events of 9-11; that it had already weaponized chemical agents that could kill large numbers of Americans; and that it was developing missile capability to strike well beyond its borders.

The truth is there's little intelligence to substantiate any of these claims. The truth is that there was an on-going debate within our intelligence community about each of these allegations. Yet the administration consistently presented each of these allegations as accepted facts.

I believe the purpose was to create a sense of urgency, the sense of an imminent threat, and to rally the country into war. The result is: we went to war before we had to—before we had done everything we could to get the world with us.

Does anyone in this room really, seriously believe that our interests would have been severely hurt if we had waited to go to war until this September or this October when we would have had much of the world with us? And there's another terrible result the damage done to our credibility.

What happens now when we need to rally the world about a weapons program in North Korea or Iran? Will anyone believe us?

In 1962, President Kennedy sent former Secretary of State Dean Acheson to France to brief DeGaulle about Soviet missiles in Cuba. Acheson offered DeGaulle a full intelligence report to back up the allegations. The French President said that wasn't necessary, he didn't need to see the report.

He told Acheson he trusted Kennedy. That he knew the President would never risk war unless he was sure of his facts. After the way this Administration handled Iraq, will we ever recover that level of trust with any of our key allies?

What price will we have to pay for the mistrust we've created?

#### GETTING IT RIGHT IN IRAQ

Last month, Senators Lugar, Hagel and I traveled to Baghdad. We left behind two of our senior staffers for an extra week to see more of the country and talk to Iraqis. We saw first hand that we have the best people on the ground. We met with military commanders with officers and with enlisted men and women and we spent time with Ambassador Bremer and the A-team he's assembled. There's no doubt we've got the right people in place. And we've made some real progress.

It was clear to us that the vast majority of the Iraqi people are happy Saddam is no longer in power. They want us to stay as long as it takes to get them back on their feet. Much of the country beyond Baghdad is relatively calm—hospitals and schools are open; the newly formed Iraqi Governing Council is encouraging; and so are the local councils, one of which we visited.

But this very real progress is being undermined by our failure so far to come to grips with some very fundamental problems, and security is problem-number-one. It's always problem-number-one. I've seen it in the Balkans. I saw it in Afghanistan. And it's just as true in Iraq. Without security, little else is possible. The problem breaks down into two parts: First, we haven't put down the opposition from forces loyal to Saddam. General Abizaid finally admitted we're facing "guerrilla war." Almost every day that our troops continue to get picked off, sometimes by a lone sniper, other times by roadside bombs that kill two, three, four, or more at a time. This cannot, it must not continue.

There's a short-term fix: more foreign troops to share our mission and more Iraqis

to guard hospitals, bridges, banks, and schools. If we had them, we could concentrate our troops in the Sunni triangle—where they're needed and where they can do the type of military job for which they were trained.

The second security issue is the pervasive lawlessness that makes life in Iraq so difficult for so many of its citizens. During the day, many Iraqis are afraid to leave home, go to work, go shopping even for the basic needs of their family. At night that fear makes much of Baghdad a ghost town. Without cops, there are countless reports of rapes and kidnappings.

When I was at the Baghdad police academy run by former New York City Police Chief Bernie Kerik, they told us just how far we have to go to get a functioning police force up and running.

Under Saddam, Iraqi cops rarely left their headquarters. If there was a murder, they wouldn't investigate out in the field. They'd ask people to come to them, and if they didn't—they'd get shot. We're not just re-training Iraq's cops, we're training them from the ground up.

We've got to build back to the 18,000 police cars that are needed from the 200 available now. We've got to rebuild Iraq's major prisons, virtually all of which were burned or looted. Ultimately, only Iraqis can provide for their own security.

The Iraqi Civil Defense Corps we've begun to establish will help, but all of our experts agree that it'll take five years to train the necessary police force of 75,000 and three years to field an army of 40,000. Until then, security is on our shoulders.

Meanwhile, the Administration seems to have lost interest in the very issue they told us was the reason to go to war—Iraq's WMD. I can't fathom how we failed to secure the known WMD sites after the war, leaving them vulnerable to looting and smuggling.

And I can't understand how the Deputy Secretary of Defense could say, just last week, that he's "not concerned about weapons of mass destruction."

On top of these overwhelming security challenges, the country's infrastructure is suffering from almost 30 years of neglect. That certainly shouldn't have been a surprise.

Even before the war, demand for electricity exceeded supply—6000 megawatts were needed; 4000 was the capacity. There were brownouts and blackouts. Today we're not even back to 4000 megawatts and may not get there until September. It'll take several years and more than 13 billion dollars to stay even with demand. The same is true with water—we'll need five years and more than 15 billion dollars to meet Iraqi demand. This feeds the gnawing sense of insecurity that paralyzes life in the capital.

Ultimately, our goal has to be to revive Iraq's economy because idle hands, rising frustration, and 5 million AK-47s is not a recipe for security. Finally, we're doing a terrible job of letting Iraqis know how Saddam destroyed their country and that we're working to make their lives better.

In fact, when I was in Baghdad, the CPA was broadcasting just 4 hours a day. I'm told we're up to nearly 14 hours but the programming—bureaucrats reading dry, dull official scripts—makes public access television look good! Meanwhile, Al Jazeera and Iranian TV dominate the airwaves 24/7 with more sophisticated programming. The bottom line is this: Iraqis simply can't understand how the most powerful nation on earth, which toppled Saddam in three weeks, and, with exact precision, directed laser guided bombs through the side door of a house, how that all-powerful nation can't get lights turned on.

In short, Iraqis have high expectations and we're not coming close to meeting them. Some of this is out of our control but we've brought a large part of this on ourselves. And that's because the problems in Iraq today were compounded by the false assumptions this Administration made going in, and by its failure to listen to its own people and outside experts. They assumed we'd be greeted as liberators. They assumed our favorite exiles would be embraced by the Iraqi people as new leaders. They assumed that the civil service, the army, and the police would remain intact and that all we'd have to do is replace their Baathist leadership. They assumed that Iraqi oil revenues would pay for the lion's share of reconstruction. All these assumptions were wrong, wrong, wrong.

The result is: They failed to begin planning for post-Saddam Iraq until just weeks before we attacked forgetting that we began planning for post-war Germany three years before the end of World War II. They failed to plan for the looting and sabotage. They failed to account for the decay and destruction of Iraq's infrastructure. They failed to secure commitments from other countries to help pay for Iraq's reconstruction. They failed to see the critical importance of putting enough boots on the ground, both our own and those of other countries.

Back in 1999, our military planners ran an exercise that concluded we'd need 400,000 troops—not to win, but to secure Iraq. Just before we invaded, the National Security Council prepared a memo that said the number was more like 500,000. I don't know if the President read the memo—I wish he had!

We might have planned differently. We might have thought twice about trying out Secretary Rumsfeld's theory that the U.S. should put fewer boots on the ground in military conflicts. And all of this has led us into a box where we have few good choices left. If we don't change course if we don't bring others along with us; if we don't get 5,000 foreign cops to train and patrol with the Iraqis; if we don't bring in more than 30,000 foreign troops to help relieve us, as the Chairman of the Joint Chiefs says we must; if we don't get the water running; if we can't make sure that a woman can leave home or send her children to school safely; if we can't get the lights on; if we fail to bridge the expectations gap by better communicating to the Iraqi people; if paralysis of progress continues for more than a couple more months; if ALL of this happens, we'll lose not only the support of the Iraqi people but the support of the American people as the discontent and the death toll rise. At that point, I predict, this Administration will be seriously tempted to abandon Iraq. They'll hand over power to a handpicked strongman dump security and reconstruction responsibility on the U.N., and we'll lose Iraq.

Imagine if we lost Iraq. In a worst case scenario, there'd be chaos and the threat of Iranian and fundamentalist domination of the country. The Middle East peace process would likely be derailed. Iraq would become a failed state and a source of instability. We'll have jeopardized our credibility in the world. And we'll be far less secure than when we went in.

So that leaves us with three options: We can pull out, and lose Iraq. That's a bad option. We can continue to do what we're doing: provide 90 percent of the troops, 90 percent of the money, and nearly 100 percent of the deaths. That's another, really bad option. Or, we can bring in the international community and empower Iraqis to bolster our efforts and legitimize a new Iraqi government which will allow us to rotate our troops out and finally bring them home.

That to me is the clear choice.

We have to bring in our allies. And you may ask: why would they want to help? The

answer is . . . it's in their interest. Iraq is in Europe's front yard. Most European countries have large Muslim populations. They have commercial interests. Stability in Iraq is vital for our European allies, and it's vital for the Arab world as well. They need to get invested just as we are.

#### THREE STEPS WE CAN TAKE

So what do we do to bring in the international community and sustain the support of the Iraqi as well as the American people? First, we need a new U.N. Resolution. We may not like it, but most of the rest of the world needs it if we expect them to send the troops we need and to help pay for Iraq's reconstruction. Let's keep in mind, the President personally tried for weeks to persuade India to send another 17,000, and they said "no—not without a U.N. resolution. With such a resolution, I think we could persuade France, and Germany, and NATO to play a larger and official role to secure the peace. But not without a resolution.

We have to understand that leaders whose people opposed the war need a political rationale to get them to support building the peace. We have to understand and be willing to accept that giving a bigger role to the United Nations and NATO means sharing control, but it's a price worth paying if it decreases the danger to our soldiers and increases the prospects of stability.

Second, it's time to act magnanimously toward our friends and allies. We are a superpower and we should be magnanimous because it's not just the right thing to do, but because it's the practical thing to do. Not simply because it's consistent with our values as a nation but because if we don't make the on-going war on the ground in Iraq the world's problem, it will remain our problem alone.

The truth is, we missed a tremendous opportunity after 9-11 to bring our friends and allies along with us and to lead in a way that actually encouraged others to follow. We missed an opportunity, in the aftermath of our spectacular military victory to ask those who were not with us in the war to be partners in the peace. Instead we served 'freedom toast' on Air Force One.

The American people get it. They intuitively understand that we can't protect ourselves from a dirty bomb on the Mall in DC; a vial of anthrax in a backpack; or a home-made nuke in the hold of a ship steaming into New York harbor without the help of every intelligence service and every customs service in the world, without Interpol and yes, the French and the Germans and even the U.N.

Third, and most importantly, I said it a year ago, and I'll say it again: no foreign policy can be sustained without the informed consent of the American people. We learned that lesson in Vietnam, but we haven't applied it to Iraq. I cannot overstate the importance of keeping the American people fully informed of the risks, the costs, to the extent we know them, and the importance of staying the course in Iraq.

This Administration has been good at projecting power, but it hasn't been anywhere near as good at staying-power. Nor has it been good at convincing the American people that securing Iraq is a necessary, if costly, task—but that it's do-able.

If we learned one thing last year, it should be that the role of those of us in positions of leadership is to speak the truth to the American people—to lay out the facts to the extent we know them and to explain to the American people exactly what's expected of them in terms of time, dollars, and commitment.

Our role as leaders is not to color the truth with cynicism and ideological rhetoric but to

animate that truth with the same resilience the same dignity, the same decency, and the same pragmatic approach the American people have applied to every task and every challenge.

It's long past time for the President to address the American people in prime time, to level with us about the monumental task ahead, to summon our support.

I and most of my colleagues will stand with him.

So yes, when it comes to foreign policy, I have a fundamental difference of opinion with some in this Administration and I'll be talking more about it in the next few weeks. But that's okay because I'm reminded of the words of Senator Arthur Vandenberg who said: "Bipartisan foreign policy does not involve the remotest surrender of free debate in determining our position. On the contrary, frank cooperation and free debate are indispensable to ultimate unity. It simply seeks national security ahead of partisan advantage. Every foreign policy must be totally debated and the loyal opposition is under special obligation to see that this occurs."

I think it is my obligation to articulate an opposing view.

#### MEMORANDUM

To: Senator Carper  
From: Margaret Simmons  
Re: Mandatory Minimum Sentencing  
Date: April 28, 2003

#### BACKGROUND

The Anti-Drug Abuse Act of 1986 provided mandatory minimum sentences of imprisonment for possession with intent to distribute powder and crack cocaine. In this statute Congress established a quantitative 100-to-1 sentence ratio between the two (i.e., it takes 100 times as much powder cocaine as crack cocaine to trigger the same sentence). Under this distinction, a person convicted of possession with intent to distribute a pound of powder cocaine (453.6 grams) would serve considerably less time in a federal prison than one convicted of possession with intent to distribute 5 grams of crack. The United States Sentencing Commission incorporated the ratio into its generally binding sentencing guidelines. Since enactment, it has become apparent that the incidence of this sentencing differential falls disproportionately on African-American defendants.

Instructed to study the situation, the Sentencing Commission proposed amendments that would equate crack and powder cocaine for sentencing purposes and recommended that Congress drop the 100-to-1 ratio from its own mandatory penalties. Congress rejected both the amendments and the suggestion for equation, but directed the Commission to re-examine the issue and report back recommendations reflecting more moderate adjustments.

In May 2002 the Sentencing Commission issued its report to Congress on cocaine and federal sentencing policy. In that report, the Commission recommended a three-pronged approach for revising federal cocaine sentencing policy: increase the five-year mandatory minimum threshold quantity for crack cocaine offenses to at least 25 grams (and the ten-year threshold quantity to at least 250 grams); provide direction for more appropriate sentencing enhancements within the guidelines' structure that target the most serious drug offenders for more severe penalties without regard to the drug involved; and maintain the current mandatory minimum threshold quantities for powder cocaine offenses. The Commission found that there does not appear to be evidence that the current quantity-based penalties for powder cocaine are inadequate.

#### DRUG SENTENCING REFORM ACT OF 2001

In the last Congress, Senator Sessions introduced legislation to reduce the disparity in punishment between crack and powder cocaine offenses, and to focus the punishment for drug offenders on the seriousness of the offense and the culpability of the offender. The legislation reduces the disparity in sentences for crack and powder cocaine from the ratio of 100-to-1 to 20-to-1. (Under state law in Delaware, the ratio is 1-to-1.) It does so by reducing the penalty for crack and increasing the penalty for powder cocaine. For example, for the five-year mandatory minimum, the bill would decrease the trigger amount for powder cocaine from 500 grams to 400 grams, and increase the trigger amount for crack cocaine from 5 grams to 20 grams.

In addition, the bill shifts some of the sentencing emphasis from drug quantity to the nature of the criminal conduct. The bill increases penalties for the worst drug offenders that use violence and employ women and children as couriers to traffic drugs. The bill also decreases mandatory penalties on those who play only a minimal role in a drug trafficking offense, such as a girlfriend or child of a drug dealer.

#### RECOMMENDATION

Senator Sessions legislation is a good start to address the disparities in mandatory sentencing between crack and powder cocaine, and achieves the recommended 20-to-1 sentencing ratio proposed by the Sentencing Commission. The bill does so by lowering the threshold quantities for powder cocaine, and increasing the threshold for crack cocaine.

However, the Sentencing Commission's recommendation was to leave the quantity-based penalties for powder cocaine unchanged. Given that this recommendation was unanimous, I think it should be given considerable weight. Thus, I would not recommend supporting legislation that adjusts the disparity in sentencing between crack and powder cocaine by changing the threshold amounts for powder cocaine.

In addition, Hispanic groups and civil rights groups are very opposed to Senator Sessions' legislation since his bill essentially increases the penalties for powder cocaine by lowering the amount needed to receive a mandatory sentence. In addition, the legislation does not address the 5-year mandatory minimum for simple possession of crack cocaine. Crack cocaine is the only drug that has a mandatory minimum sentence for simple possession.

Finally, Senator Biden's Subcommittee held a hearing in the last Congress to review the recommendations of the Sentencing Commission. It is clear from the transcript of that hearing that Senator Biden believes that the mandatory minimum sentencing should be changed, but he does not support Senator Sessions' approach. According to Senator Biden's staff, the Senator had been interested in developing his own legislation to address the mandatory minimum sentence issue in the last Congress. Therefore, given Senator Biden's history on this issue, from writing the original mandatory sentencing law in 1986 to his interest in adjusting this law, I would strongly recommend that you speak with him directly before taking any action on this subject.

#### NAACP V. ACUSPORT

Mr. LEVIN. Mr. President, last week U.S. district court judge Jack Weinstein of the Eastern District of New York found in the case of National Association for the Advancement of Colored People v. Acusport, Inc. et al. "clear and convincing evidence" that

some gun manufacturers are guilty of "careless practices."

The NAACP filed the lawsuit against gunmakers and wholesalers for what they argued were negligent firearms distribution practices. The NAACP lawsuit did not seek financial relief but sought injunctive relief to force the gun industry to take meaningful steps towards safer business practices.

Judge Weinstein's decision was a broad condemnation of current business practices in the gun industry. Judge Weinstein said "the evidence presented at trial demonstrated that defendants are responsible for the creation of a public nuisance and could, voluntarily and through easily implemented changes in marketing and more discriminating control of sales practices of those to whom they sell their guns, substantially reduce the harm occasioned by the diversion of guns to the illegal market and by the criminal possession and use of those guns."

Although Judge Weinstein did not grant the NAACP the relief it sought, the gun industry should take no consolation in this result. In fact, relief was denied only because the court found that all New Yorkers suffered from the same kind of injuries from gun industry misconduct suffered by members of the NAACP.

The Lawful Commerce in Arms Act that recently passed the House and that has been referred to the Senate Judiciary Committee would shield negligent and reckless gun dealers from many legitimate civil lawsuits like the NAACP case. Certainly, those in the industry who conduct their business negligently or recklessly should not be shielded from the civil consequences of their actions. I urge my colleagues to oppose this bill.

#### THE RETIREMENT OF SHARON PETERSON

Mr. BAUCUS. Mr. President, I rise to pay tribute and express my deepest appreciation for a member of my staff who has served the U.S. Senate, me personally, and the State of Montana admirably.

Today is my State director Sharon Peterson's last day. She retires today after more than 22 year of service in the Senate.

Sharon's career in public service is the culmination of a lifetime of hard work.

Sharon became interested in public service after seeing the late Senate Majority Leader Mike Mansfield speak in Lewistown. He inspired her to give back to Montana. Which she's been doing ever since.

As a Fergus County rancher, along with her husband Garde, she has always been interested in the policies that affect Montana agriculture. And she's considered an expert in the field.

Sharon helped organize Montana Women Involved in Farm Economics—or WIFE—in 1975. This led to an appointment from President Jimmy